

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

MELINDA L. CARMEN,

Plaintiff,

v.

STATE FARM FIRE AND CASUALTY COMPANY

Defendant.

FILED
2015 JAN -9 P 12:47

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

Case No. 1:15-cv-37
CMH/TRJ

NOTICE OF REMOVAL

COMES NOW the Defendant, State Farm Fire and Casualty Company ("State Farm"), by counsel, pursuant to 28 U.S.C. §§ 1441 and 1446, and files this Notice of Removal to remove this action to this Court from the Circuit Court for the County of Fairfax, Virginia. In support of this Notice, State Farm states the following grounds for removal:

1. On or about August 12, 2014, Plaintiff Melinda L. Carmen ("Carmen" or "Plaintiff") commenced this civil action against State Farm Fire and Casualty Company and other defendants in the Circuit Court for the County of Fairfax, Virginia, under the caption *Melinda L. Carmen v. State Farm Fire and Casualty Company, Watts Water Technology, Watts Regulator Company, Wolverine Brass Incorporated, and ServiceMaster of Fairfax, Inc.*, Case No. CL2014-10600, alleging state law tort and contract claims and demanding a judgment for compensatory damages in the amount of \$6,000,000.00, as well as declaratory relief.

2. Plaintiff Melinda L. Carmen is and has been at all times relevant hereto an individual resident, citizen and domiciliary of the Commonwealth of Virginia.

3. Defendant State Farm Fire and Casualty Company is and has been at all times relevant hereto an insurance company incorporated under the laws of the State of Illinois, with its principal place of business in Bloomington, Illinois, and therefore a citizen of Illinois.

4. At the time this action was initiated in the Circuit Court for the County of Fairfax, the action was not removable to this Court under the diversity statute, 28 U.S.C. § 1332, because complete diversity did not exist between the Plaintiff and defendant ServiceMaster of Fairfax, Inc., which at all pertinent times was a Virginia corporation with its principal place of business in Dulles, Virginia, and therefore a citizen of Virginia. *See* Exhibit 1 hereto.

5. On August 20, 2014, State Farm Fire and Casualty Company's registered agent was served with the Complaint attached hereto as Exhibit 2.

6. On September 9, 2014, State Farm Fire and Casualty Company responded to the Complaint with the filing of a Motion Craving Oyer, Demurrer, and Motion to Drop, Dismiss or Sever, copies of which are attached hereto as Exhibit 3.

7. Count I of the Complaint alleged a products liability (breach of express and/or implied warranties) claim against former defendants Watts Water Technology (a Delaware corporation with its principal place of business in Massachusetts, and therefore a citizen of Delaware and Massachusetts), Watts Regulator Company (a Delaware corporation with its principal place of business in Massachusetts, and therefore a citizen of Delaware and Massachusetts), and Wolverine Brass Incorporated (a South Carolina corporation with its principal place of business in South Carolina, and therefore a citizen of South Carolina) (hereafter "the products liability defendants"). The products liability defendants responded to the Complaint with the filing of Demurrers, Pleas in Bar, Motions for Bill of Particulars, and Demurrers and Motions to Dismiss for Misjoinder, copies of which are attached hereto collectively as Exhibit 4. By Order of Partial Non-Suit entered October 27, 2014, a true copy of which is attached as Exhibit 5, all claims alleged against the products liability defendants were dismissed by non-suit.

8. Counts II and III of the Complaint alleged claims of breach of contract and

negligence against former defendant ServiceMaster of Fairfax, Inc. On or about September 15, 2014, ServiceMaster of Fairfax, Inc. responded to the Complaint with the filing of a Demurrer, Motion Craving Oyer, Answer and Counterclaim, copies of which are attached hereto collectively as Exhibit 6. On January 9, 2015, the Orders of Partial Non-Suit attached as Exhibits 7 and 8 were entered by the Fairfax County Circuit Court, dismissing all claims alleged by Plaintiff against ServiceMaster of Fairfax, Inc., and dismissing the Counterclaim by ServiceMaster of Fairfax, Inc.

9. As to State Farm Fire and Casualty Company, this is an action on an insurance policy. Plaintiff seeks a recovery under a Homeowners Policy of insurance issued by State Farm following a water loss that allegedly occurred at her residence in Fairfax County, Virginia on or about August 21, 2012.

10. 28 U.S.C. § 1446(b)(3) provides that “[e]xcept as provided in subsection (c), if the case stated by the initial pleading is not removable, a notice of removal may be filed within 30 days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.”

11. The non-diverse former defendant, ServiceMaster of Fairfax, Inc., was voluntarily dismissed from this action by Agreed Orders entered January 9, 2015, which dismissed by non-suit all claims alleged by and against ServiceMaster of Fairfax, Inc. Pursuant to 28 U.S.C. § 1446(b)(3), this action first became removable on January 9, 2015 because as of that date, following the Plaintiff’s voluntary dismissal of the non-diverse defendant (ServiceMaster of Fairfax, Inc.) from the action, complete diversity exists between the remaining parties (Plaintiff Melinda Carmen and Defendant State Farm Fire and Casualty Company) and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

12. This Notice is filed within thirty (30) days of the date that the action first became removable, and less than one (1) year after commencement of this action, in accordance with 28 U.S.C. §§ 1446(b) and 1446(c).

13. A copy of all process, pleadings, and orders served upon State Farm are attached to this Notice of Removal, in accordance with 28 U.S.C. § 1446(a). In addition to the pleadings and orders described above and attached hereto as Exhibits 1 – 8, additional pleadings and orders filed in the state court action prior to removal are attached hereto collectively as Exhibit 9.

14. This civil action is one over which this Court has original jurisdiction on the basis of diversity of citizenship pursuant to 28 U.S.C. § 1332(a), and removal jurisdiction under 28 U.S.C. § 1441(a). The amount in controversy alleged in the Complaint (\$6 million) exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and the action is between citizens of different states – Plaintiff is a citizen of Virginia, and Defendant is a citizen of Illinois.

15. State Farm Fire and Casualty Company has this day provided notice of the filing of this Notice of Removal to the Plaintiff and to the Clerk of the Circuit Court for the County of Fairfax, Virginia, as required by 28 U.S.C. § 1446(d).

16. The United States District Court for the Eastern District of Virginia, Alexandria Division, embraces the place where the state court action is pending, in accordance with 28 U.S.C. § 1441(a).

WHEREFORE, Defendant State Farm Fire and Casualty Company, by counsel, hereby gives notice that this action is removed to this Court from the Circuit Court for the County of Fairfax, Virginia.

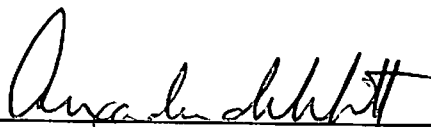
Respectfully submitted,

STATE FARM FIRE AND CASUALTY COMPANY

By Undersigned Counsel

By:

/s/



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*ATTORNEY FOR DEFENDANT STATE FARM
FIRE AND CASUALTY COMPANY*

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of January, 2014, a true copy of the foregoing NOTICE OF REMOVAL was delivered by electronic mail and by first-class U.S. mail, postage prepaid, to J. Chapman Petersen, Esq. and Jason F. Zellman, Esq., Surovell, Isaacs, Petersen & Levy PLC, 4010 University Drive, 2nd Floor, Fairfax, VA 22030, Email: cpetersen@siplfirm.com, jzellman@siplfirm.com.

/s/



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